

11/12/82

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN

Plaintiff

v.

FEDERAL BUREAU OF INVESTIGATION, et al.,

Defendants

Civil Action No.  
81-1206

AFFIDAVIT

I, John N. Phillips, being duly sworn, depose and  
say as follows:

(1) I am a Special Agent of the Federal Bureau of  
Investigation (FBI), assigned in a supervisory capacity to the  
Freedom of Information-Privacy Acts (FOIPA) Section, Records  
Management Division, FBI Headquarters (FBIHQ), Washington, D.C.  
This affidavit was prepared in connection with defendants' response  
to plaintiff's motion for waiver of all search fees and copying costs.  
The statements made herein are based upon my familiarity with the  
procedures followed by the FBI in processing requests for infor-  
mation received pursuant to the Freedom of Information Act (FOIA)  
and upon information furnished to me by other individuals in the FBI.

(2) The following correspondence has been exchanged  
between plaintiff and the defendants in this case:

Attachment 1

(A) By letter dated December 12, 1980, plaintiff requested "all correspondence or any records of any communication between the U.S. House Select Committee on Assassinations and the Federal Bureau of Investigation relating to the Select Committee's investigation into the assassination of President John F. Kennedy." Plaintiff also requested a fee waiver for all search and copying fees. (A copy of this letter is attached hereto as Exhibit A.)

(B) By letter from Mr. Thomas H. Bresson, former Chief of the FBI's FOIPA Section at FBIHQ, dated January 30, 1981, plaintiff was advised that a determination on his fee waiver request was being held in abeyance pending a determination as to whether Congress maintained control over the documents responsive to plaintiff's FOIA request. (A copy of this letter is attached hereto as Exhibit B.)

(C) By letter dated March 13, 1981, plaintiff was advised that the FBI was in receipt of letters from the U.S. House of Representatives dated March 26, 1979 and March 2, 1981, indicating the Congressional viewpoint that material responsive to plaintiff's FOIA request could not be released. (A copy of this letter is attached hereto as Exhibit C. Also attached are the two congressional letters referred to in the letter.)

(D) By letter dated March 19, 1981, to the Office of Privacy and Information Appeals (OPIA), Department of Justice (DOJ), plaintiff appealed the determination of the FBI to deny the records requested in his December 12, 1980, request. (A copy of this letter is attached hereto as Exhibit D.)

(E) By letter dated April 1, 1981, from OPIA, DOJ, plaintiff was advised of the backlog of appeals and that he would be advised of the Associate Attorney General's decision concerning his appeal. (A copy of this letter is attached hereto as Exhibit E.)

(F) By letter dated April 6, 1981, to the FBI, plaintiff requested all records relating to the investigation of the HSCA into the assassination of President John F. Kennedy not covered by his FOIA request dated December 12, 1980. Plaintiff also requested a waiver of all copying and search fees. (A copy of this letter is attached hereto as Exhibit F.)

(G) By letter to plaintiff dated April 13, 1981, we reiterated our position that the requested material was exempt from disclosure pursuant to Title 5, United States Code, Section 551 (1) (A) (1976). (A copy of this letter is attached hereto as Exhibit G.)

(H) By letter dated April 15, 1981, to the Associate Attorney General, plaintiff appealed the denial contained in the FBI's letter of April 13, 1981. (A copy of this letter is attached hereto as Exhibit H.)

(I) By letter dated April 28, 1981, from OPIA, DOJ, plaintiff was advised of the backlog of appeals and that he would be notified of the Associate Attorney General's decisions concerning his appeal. (A copy of this letter is attached hereto as Exhibit I.)

(J) By letter dated December 31, 1981, plaintiff was advised that his request for a fee waiver for search and copying costs was denied. (A copy of this letter is attached hereto as Exhibit J.)

(3) Because of the FBI's initial determination that the records involved here were congressional records, it held plaintiff's fee waiver request in abeyance. Since it is now processing many of the records as "agency records", it became appropriate to consider plaintiff's fee waiver request. Such consideration required an inventory of the records involved. (See paragraph 4, infra.)

(4) Due to the stringent time constraints placed on the FBI, only a cursory examination has been made of all the material requested by plaintiff. This examination involved two experienced Miscellaneous Documents Examiners who are familiar with the Kennedy assassination investigation. They spent approximately 160 hours over the past two weeks inventorying the documents involved. This inventory mainly involved determining the subject of the files involved, the approximate dates the cases were opened and closed, the approximate number of pages in each case file and if the material in a file was related to the Kennedy assassination. Based upon that inventory, it was determined that the following general categories and records encompass the material requested in this case:

(A) Organized Crime - These investigations, in all instances, were started because of suspected involvement by individuals in organized crime type activities unrelated to the Kennedy assassination investigation. In most cases these investigations were opened before or years after the assassination. A very limited number were opened in close proximity in time to the date of the Kennedy assassination. However, they were not opened because of the assassination. There are approximately 139 cases in this category totaling approximately 138,500 pages.

(B) Foreign Counter Intelligence - These investigations are opened based on allegations that the individual or organization was involved in activities inimical to the national security of the United States with the support of individuals, organizations or governments of other countries. In all cases except one, these investigations were opened prior to the assassination. The one exception was opened three years after the assassination. None of these 13 cases, consisting of approximately 2600 pages, were opened in response to the assassination investigation.

(C) Internal Security - These investigations are opened based on allegations that the individual or organization, who may or may not have the support of individuals, organizations or governments of other countries, was involved in activities inimical to the national security of the United States. There are approximately 190 different cases totaling approximately 63,000 pages in this category.

gory. In most cases in this category the case was opened before or long after the assassination. In a few instances the case was opened near the date of the assassination, however, they are unrelated to the assassination investigation.

(D) Other Criminal - This category includes all types of files which could not be placed in one of the above categories; i.e., Interstate Transportation of Stolen Property and Civil Rights. Most of these 131 cases were opened prior to or after the date of the assassination. However, none of these cases, including those opened in close proximity to the date of the assassination, are related to the assassination of President Kennedy. There are approximately 34,000 pages in this category.

(E) Administrative Records - This category of material includes ticklers of correspondence with the House Select Committee on Assassination (HSCA), news clippings, personnel matters, classification addenda and other purely administrative material. This material totals approximately 7200 pages.

(F) Correspondence file concerning the HSCA - This 25 volume files consists of letters to and from the HSCA, letters to and from FBI field offices and other agencies and internal FBI memoranda. This file consists of approximately 6300 pages.

(G) John F. Kennedy Assassination Investigation - This material, totaling approximately 100,000 pages, has been previously processed and is in the public domain. Plaintiff has reviewed this material as stated in his affidavit.

(H) Special File Room - One file cabinet containing copies of sensitive classified and informant documents prepared for the review of the HSCA, is maintained in the Special File Room, Records Management Division. The Special File Room's purpose is to limit access to very sensitive investigatory, informant and/or highly classified documents in a very secure area. Only certain personnel, with appropriate security clearances and need to know, are authorized admittance to the Special File Room.

A limited review of this material was conducted and the following is a description of its contents using the previously outlined categories. Included in this is one subject in the FCI category consisting of approximately 600 pages, a limited portion of which is related to the Kennedy assassination, four subjects in the Internal Security category consisting of approximately 235 pages, a limited portion of which is related to the Kennedy assassination, and three subjects in the Miscellaneous category consisting of approximately 704 pages, none of which is related to the assassination. None of these files were opened as a result of the assassination. Also, there are 15 cassette tape recordings and 31 - 7 inch tape reels which were made by the FBI of the television hearings of the HSCA on the John F. Kennedy assassination.

(5) The HSCA reviewed the material described in paragraph 4 supra, spending approximately five million dollars. At the conclusion of their investigation the HSCA published a 260 page report with 12 volumes of exhibits in which they included everything which could be deemed as relating to the assassination on President Kennedy. (House Report No. 95-1828, 95th Congress, 2nd Session, 1979)

(6) Duplication charges alone could be as high as \$30,000 to process all these records.

(7) Because of the FBI's initial position, based upon requests from Congress (see attachments to Exhibit C), that all of the records involved in this case were congressional records, there was no necessity to consider plaintiff's fee waiver request. Plaintiff was informed that his fee waiver request was being held in abeyance until the status of the responsive documents was determined (see Exhibits B, C, & E). When it was decided on December 7, 1981, that many of the responsive documents are agency records, the plaintiff's fee waiver request was reopened and considered by the FBI's Fee Waiver Committee. The factors considered by the fee waiver committee included the nature of the information requested; the purpose for which the information is sought; the size of the public to be benefited; the likelihood that some tangible public good will be realized as a result of this release; whether disclosure

is timely with regard to a matter of current public interest; its relevance to important legal, social or political issues; and whether the material is personal in nature or will serve only the private interests of the requester. After considering these factors and in light of the material described previously the fee waiver committee determined that a fee waiver was not applicable. Plaintiff was informed of this decision in a letter dated December 31, 1981, a copy of which is attached as Exhibit J.

(8) Plaintiff states that Mr. Harold Weisberg received a court ordered fee waiver for the material he obtained pertaining to the assassination of President Kennedy. The court, in *Harold Weisberg v. Griffin Bell*, Civil Action Number 77-2155 ordered that Mr. Weisberg be given a fee waiver for all Kennedy assassination materials released to him on January 17, 1978. Shortly after issuance of the Court ordered fee waiver, the Department of Justice expanded the fee waiver to include records "compiled pursuant to the investigations of the assassinations of President Kennedy and Dr. King", regardless of when released.

(9) Mr. Weisberg made a request similar to plaintiff's request on December 4, 1979. Pursuant to review of this request, the Associate Attorney General concluded, after reviewing memorandums from David G. Flanders, Alice Daniel and Quinlan J. Shea, Jr., that the expanded fee waiver of Mr. Weisberg should be terminated.

Thus, the documents described in paragraph (4) (G) supra have already been the subject of a fee waiver request, which was granted, and have been released to the recipient of the fee waiver (Mr. Weisberg); while the materials described in paragraph (4) supra other than those noted in paragraph (4) (G) supra have been the subject of a previous fee waiver denial by the DOJ.

John N. Phillips  
John N. Phillips  
Special Agent  
Federal Bureau of Investigation  
Washington, D.C.

Subscribed and sworn to before me this 12<sup>th</sup> day of January, 1982.

Lu Ann Woloslagh  
Notary Public

My Commission expires April 30, 1984.